

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NATIONWIDE INSURANCE CO.,
T/U/O AURELIANO VASQUEZ,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

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Civil Action No. WDQ-02-4191

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MOTION TO DISMISS

Defendant, the United States of America, through undersigned counsel, Thomas M. DiBiagio, United States Attorney for the District of Maryland and Neil R. White, Assistant United States Attorney for said district, respectfully moves pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for an order dismissing Plaintiff's Complaint in its entirety. In support whereof, Defendant states:

1. This Court lacks subject matter jurisdiction over Plaintiff's claims against the United States under the Federal Tort Claims Act ("FTCA") because, at the time the action was commenced, Plaintiff's administrative claim was still pending with the agency on Plaintiff's request for reconsideration. 28 U.S.C. § 2675(a); 28 C.F.R. § 14.9(b).

2. The grounds supporting this Motion are set forth in greater detail in the accompanying Memorandum of Law.

WHEREFORE, Defendant respectfully requests that the Court grant the motion and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

Thomas M. DiBiagio
United States Attorney

/s/

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